



Billing Code: 4910-57

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA-2016-0002]**

### **Notice of Buy America Waiver for a Radio Communications System**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Buy America waiver.

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**SUMMARY:** In response to the request of the Kansas City Area Transportation Authority (KCATA) for a Buy America waiver for a DMR Tier III Trunked UHF Voice radio system that is compatible with its current system, the Federal Transit Administration (FTA) hereby waives its Buy America requirements finding that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. This waiver is limited to a single procurement by KCATA for the DMR Tier III Trunked UHF Voice radio system.

**DATES:** This waiver is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or [laura.ames@dot.gov](mailto:laura.ames@dot.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for KCATA's procurement of a DMR Tier III Trunked UHF radio system under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron,

and manufactured goods used in the project are produced in the United States.” 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

KCATA provides public transportation services in the Kansas City, Missouri, metropolitan area, operating in seven counties. KCATA’s current radio system was purchased in 2002 and fully activated in 2005. The radio system is analog and operates on two separate channels. It has limited growth capabilities, issues with “talk over,” inaccessible voice connections, and escalating maintenance costs. KCATA is in the process of upgrading its radio system.

As part of its plan to upgrade the radio system, KCATA issued a Request for Proposals (RFP) on December 16, 2014, seeking a “turnkey project that includes a DMR Tier III Trunked UHF Voice radio system, full integration of the radio system with the Trapeze TransitMaster CAD/AVL system, and extended maintenance and support.” KCATA only received one response to the RFP. Tait North America (Tait) expressed interest in the project but noted that it is headquartered in New Zealand and that a majority of the products supplied for the project would be assembled in New Zealand, making them non-compliant with Buy America.

Neither KCATA nor FTA has identified any companies in the United States that can meet the Buy America requirements for this project. FTA also conducted a scouting search for a U.S. manufacturer of a comparable radio system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search did not result in identifying any domestic manufacturers who could provide the equipment required by KCATA.

On Wednesday, March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** (81 FR 15410) requesting public comment on, among other topics, the merits of KCATA's waiver request and potential effects of granting the waiver. The public comment period closed on March 29, 2016. FTA received only once comment.

Selex ES, a subsidiary of an Italian company with its North America headquarters in Overland Park, Kansas, commented that although it did not submit a proposal to KCATA's RFP, it can supply a DMR Tier III Trunked Radio Systems similar to the system proposed by Tait, arguing that Selex ES is a "local" option for KCATA. Although Selex ES markets, designs, stages, ships, and services DMR Tier III Trunked Radio Systems and is based in Kansas, Selex ES does not provide a system that is compliant with FTA's Buy America requirement for manufactured goods. As noted above, Buy America applies to manufactured goods, not services. Additionally, Selex ES did not participate in the initial RFP offered by KCATA. If Selex ES had bid on KCATA's RFP it too would have needed a non-availability waiver of the Buy America requirements.

Therefore, based on the information supplied in support of KCATA's request for a Buy America waiver for the DMR Tier III Trunked UHF Voice radio system that is compatible with its current system, including NIST's inability to locate a domestic manufacturer that currently

produces a similar system and that no other entity was able to establish that it makes a Buy America compliant system, FTA hereby waives its Buy America requirements for the DMR Tier III Trunked UHF Voice radio system on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement for the DMR Tier III Trunked UHF Voice radio system by KCATA.

Issued on April 14, 2016.

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Deputy Chief Counsel

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